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7 *Attorneys for Plaintiff Joshua James Eaton Philips, on*
8 *behalf of himself and all others similarly situated*

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 Joshua James Eaton Philips, on behalf of
himself and all others similarly situated,

14 Plaintiff,

15 v.

16 Munchery, Inc.,

17 Defendant.

CASE NO. _____

19 **CLASS ACTION COMPLAINT FOR**
20 **(1) VIOLATION OF WARN ACT 29 U.S.C. § 2101, ET SEQ.**
21 **AND (2) VIOLATION OF CALIFORNIA LABOR CODE § 1400 ET. SEQ.**

22 Plaintiff Joshua James Eaton Philips (“Plaintiff”) alleges on his own behalf and the
23 putative class of those similarly situated as follows:

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28 ^{1 and 2} Not admitted to the Bar of the U.S. District Court N.D. Calif. Applications for admission
pro hac vice to be filed.

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2. The Plaintiff brings this action on behalf of himself and the other similarly situated former employees who worked for Defendant and who were terminated without cause, as part of, or as the result of, the mass layoff or plant closing ordered by Defendant on or about January 21, 2019 and within thirty (30) days of that date, and who were not provided 60 days' advance written notice of their terminations by Defendant, as required by the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. § 2101 *et seq.*, and the California Labor Code § 1400 *et seq.* ("CAL-WARN Act").

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4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 29 U.S.C. § 2104(a)(5).

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Plaintiff

1 7. Plaintiff was employed by Defendant and worked at or reported to the Defendant's
2 facility located at 200 Shaw Road, South San Francisco 94080 (the "Facility") until his
3 termination on or about January 21, 2019.

4 8. Plaintiff was terminated without cause.

5 9. Plaintiff was terminated without 60 days' written notice.

6 10. On information and belief, an estimated 250 similarly situated former employees
7 who worked at the Facility were also terminated on or about January 21, 2019 without cause and
8 without 60 days' written notice.
9

10 **Defendant**

11 11. Upon information and belief and at all relevant times, Defendant is a corporation
12 organized and existing under the laws of the State of Delaware with headquarters in San
13 Francisco.
14

15 12. Until on or about January 21, 2019, Plaintiff and all similarly situated employees
16 were employed by Defendant and worked at or reported to the Facility.

17 **WARN ACT CLASS ALLEGATIONS**

18 13. Plaintiff brings this action individually and on behalf of all other similarly situated
19 former employees of Defendant who worked at or reported to the Facility and were terminated
20 without cause beginning on or about January 21, 2019 and within 30 days of that date, or as the
21 reasonably foreseeable consequence of the mass layoff or plant closing ordered by Defendant on
22 that date, pursuant to 29 U.S.C. § 2104(a)(5).
23

24 14. The persons in the Class identified above ("Class Members") are so numerous that
25 joinder of all members is impracticable. Although the precise number of such persons is
26 unknown, the facts on which the calculation of that number can be based are presently within the
27 sole control of Defendant.
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1 15. On information and belief, the identity of the members of the class and the recent
2 residence address of each of the Class Members is contained in the books and records of
3 Defendant.

4 16. On information and belief, the rate of pay and benefits that were being paid by
5 Defendant to each Class Member at the time of his/her termination is contained in the books and
6 records of the Defendant.

7 17. There are questions of law and fact common to the Class Members that
8 predominate over any questions affecting individual members.

9 18. There are questions of law and fact common to the Class Members that
10 predominate over any questions solely affecting individual members of the Class, including but
11 not limited to:
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- 13 (a) whether the Class Members were employees of the Defendant who worked
14 at or reported to the Facility;
15 (b) whether Defendant terminated the employment of the Class Members
16 without cause on their part and without giving them 60 days' advance
17 written notice; and
18 (c) whether Defendant paid the Class members 60 days' wages and benefits as
19 required by the WARN Act.

20 19. Plaintiff's claim is typical of those of the WARN Class. Plaintiff, like other
21 WARN Class members, worked at or reported to the Facility and was terminated without cause
22 on or about January 21, 2019, due to the mass layoff and/or plant closing ordered by Defendant.

23 20. Plaintiff will fairly and adequately protect the interests of the WARN Class.
24 Plaintiff has retained counsel competent and experience in complex class actions, including the
25 WARN Act and employment litigation.

26 21. Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3)
27 because questions of law and fact common to the WARN Class predominate over any questions
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1 affecting only individual members of the WARN Class, and because a class action is superior to
2 other available methods for the fair and efficient adjudication of this litigation – particularly in
3 the context of WARN Act litigation, where individual plaintiffs may lack the financial resources
4 to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages
5 suffered by individual WARN Class members are small compared to the expense and burden of
6 individual prosecution of this litigation.
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8 22. Concentrating all the potential litigation concerning the WARN Act rights of the
9 members of the Class in this Court will obviate the need for unduly duplicative litigation that
10 might result in inconsistent judgments, will conserve the judicial resources and the resources of
11 the parties and is the most efficient means of resolving the WARN Act rights of all the members
12 of the Class.
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14 23. Plaintiff intends to send notice to all members of the WARN Class to the extent
15 required by Rule 23.

16 24. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy – particularly in the context of WARN Act litigation, where
18 individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal
19 court against corporate Defendant.
20

21 **CALIFORNIA WARN CLASS ALLEGATIONS, Cal. Labor Code § 1401**

22 25. Plaintiff brings the Second Claim for Relief for violation of Labor Code § 1401 on
23 behalf of herself and a class of similarly situated persons pursuant to Labor Code § 1404 and
24 Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported to Defendant's
25 Facility and were terminated without cause beginning on or about January 21, 2019 (the "CAL
26 WARN Class")
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1 26. The persons in the CAL WARN Class identified above (“CAL WARN Class
2 Members”) are so numerous that joinder of all members is impracticable. Although the precise
3 number of such persons is unknown, the facts on which the calculation of that number can be
4 based are presently within the sole control of Defendant.

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6 27. On information and belief, the identity of the members of the class and the recent
7 residence address of each of the CAL WARN Class Members is contained in the books and
8 records of Defendant.

9 28. On information and belief, the rate of pay and benefits that were being paid by
10 Defendant to each CAL WARN Class Member at the time of his/her termination is contained in
11 the books and records of Defendant.

12 29. Common questions of law and fact exist as to members of the CAL WARN Class,
13 including, but not limited to, the following:

14 (a) whether the members of the CAL WARN Class were employees of the
15 Defendant;

16 (b) whether Defendant unlawfully terminated the employment of the members
17 of the CAL WARN Class without cause on their part and without giving them 60 days advance
18 written notice in violation of the CAL WARN Act; and
19

20 (c) whether Defendant unlawfully failed to pay the CAL WARN Class
21 members 60 days wages and benefits as required by the CAL WARN Act.
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23 30. The California Class Plaintiff’s claims are typical of those of the CAL WARN
24 Class. The California Class Plaintiff, like other WARN Class members, worked at or reported to
25 the Facility and was terminated on or about January 21, 2019, due to the terminations ordered by
26 Defendant.
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31. The California Class Plaintiff will fairly and adequately protect the interests of the CAL WARN Class. The California Class Plaintiff has retained counsel competent and experienced in complex class actions on behalf of employees, including the CAL WARN Act, the federal WARN Act, other similar state laws, and employment litigation.

32. Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the CAL WARN Class predominate over any questions affecting only individual members of the CAL WARN Class, and because a class action superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of CAL WARN Class Act litigation, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages suffered by individual CAL WARN Class members are small compared to the expense and burden of individual prosecution of this litigation.

33. Concentrating all the potential litigation concerning the CAL WARN Act rights of the members of the Class in this Court will obviate the need for unduly duplicative litigation that might result in inconsistent judgments, will conserve the judicial resources and the resources of the parties and is the most efficient means of resolving the CAL WARN Act rights of all the members of the Class.

34. The California Class Plaintiff intends to send notice to all members of the CAL WARN Class to the extent required by Rule 23.

CLAIMS FOR RELIEF

Federal WARN Act, U.S.C. § 2101 et seq.

35. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

1 36. At all relevant times, Defendant employed more than 100 employees who in the
2 aggregate worked at least 4,000 hours per week, exclusive of hours of overtime, within the United
3 States.

4 37. At all relevant times, Defendant was an “employer,” as that term is defined in 29
5 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a).

6 38. At all relevant times, Plaintiff and the other similarly situated former employees
7 were employees of Defendant as that term is defined by 29 U.S.C. §2101.
8

9 39. On or about January 21, 2019, and within 30 days thereafter, Defendant ordered a
10 mass layoff and/or plant closing at the Facility, as that term is defined by 29 U.S.C. § 2101(a)(2).
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12 40. The mass layoff and/or plant closing at the Facility resulted in “employment
13 losses,” as that term is defined by 29 U.S.C. § 2101(a)(2) for at least fifty of Defendant’s
14 employees as well as more than 33% of Defendant’s workforce at the Facility, excluding “part-
15 time employees,” as that term is defined by 29 U.S.C. § 2101(a)(8).

16 41. Plaintiff and the Class Members were terminated by Defendant without cause on
17 their part, as part of or as the reasonably foreseeable consequence of the mass layoff or plant
18 closing ordered by Defendant at the Facility.

19 42. Plaintiff and the Class Members are “affected employees” of Defendant, within the
20 meaning of 29 U.S.C. § 2101(a)(5).
21

22 43. Defendant was required by the WARN Act to give Plaintiff and the Class
23 Members at least 60 days’ advance written notice of their terminations.

24 44. Defendant failed to give Plaintiff and the Class members written notice that
25 complied with the requirements of the WARN Act.

26 45. The Plaintiff is, and each of the Class Members are, “aggrieved employees” of the
27 Defendant as that term is defined in 29 U.S.C. § 2104 (a)(7).
28

1 46. Defendant failed to pay Plaintiff and each of the Class Members their respective
2 wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 days
3 following their respective terminations and failed to make the pension and 401(k) contributions
4 and provide employee benefits under ERISA, other than health insurance, for 60 days from and
5 after the dates of their respective terminations.
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7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, the Plaintiff, individually and on behalf of all other similarly situated
9 persons, prays for the following relief as against Defendant:

- 10 A. Certification that, pursuant to Fed. R. Civ. P. 23 (a) and (b), Plaintiff and the other
11 similarly situated former employees constitute a single class;
12 B. Designation of the Plaintiff as Class Representative;
13 C. Appointment of the undersigned attorneys as Class Counsel;
14 D. A judgment in favor of Plaintiff and each of the “affected employees” equal to the
15 sum of: their unpaid wages, salary, commissions, bonuses, accrued holiday pay,
16 accrued vacation pay, pension and 401(k) contributions and other ERISA benefits,
17 for 60 days, that would have been covered and paid under the then-applicable
18 employee benefit plans had that coverage continued for that period, all determined
19 in accordance with the WARN Act, 29 U.S.C. § 2104(a)(1)(4) and the California
20 Labor Code § 1402(a);
21 E. Interest as allowed by law on the amounts owed under the preceding paragraph;
22 F. Plaintiff’s reasonable attorneys’ fees and the costs and disbursements that the
23 Plaintiff incurred in prosecuting this action, as authorized by the WARN Act, 29
24 U.S.C. § 2104(a)(6); and
25 G. Such other and further relief as this Court may deem just and proper.
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DATED: January 25, 2019

Respectfully submitted,

/s/ Gail Lin Chung
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*Attorneys for Plaintiff and the other similarly
situated former employees*

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Gail Lin Chung, Cal St. Bar. No. 212334; Outten & Golden LLP
San Francisco, California 94111; (415) 638-8800

Attorneys (If Known)

1	U.S. Government Plaintiff	<input checked="" type="checkbox"/>	3	Federal Question (U.S. Government Not a Party)
2	U.S. Government Defendant	<input type="checkbox"/>	4	Diversity (Indicate Citizenship of Parties in Item III)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated <i>or</i> Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated <i>and</i> Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	PERSONAL INJURY 365 Personal Injury – Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act	
120 Marine			690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))	
130 Miller Act			LABOR	PROPERTY RIGHTS	400 State Reapportionment	
140 Negotiable Instrument			710 Fair Labor Standards Act	820 Copyrights	410 Antitrust	
150 Recovery of Overpayment Of Veteran's Benefits			720 Labor/Management Relations	830 Patent	430 Banks and Banking	
151 Medicare Act			740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce	
152 Recovery of Defaulted Student Loans (Excludes Veterans)			751 Family and Medical Leave Act	840 Trademark	460 Deportation	
153 Recovery of Overpayment of Veteran's Benefits			✕ 790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations	
160 Stockholders' Suits			791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit	
190 Other Contract			IMMIGRATION	862 Black Lung (923)	490 Cable/Sat TV	
195 Contract Product Liability	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange			
196 Franchise	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions			
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		865 RSI (405(g))	891 Agricultural Acts	
210 Land Condemnation	440 Other Civil Rights	HABEAS CORPUS		FEDERAL TAX SUITS	893 Environmental Matters	
220 Foreclosure	441 Voting	463 Alien Detainee		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act	
230 Rent Lease & Ejectment	442 Employment	510 Motions to Vacate Sentence		871 IRS—Third Party 26 USC § 7609	896 Arbitration	
240 Torts to Land	443 Housing/ Accommodations	530 General			899 Administrative Procedure Act/Review or Appeal of Agency Decision	
245 Tort Product Liability	445 Amer. w/Disabilities—Employment	535 Death Penalty			950 Constitutionality of State Statutes	
290 All Other Real Property	446 Amer. w/Disabilities—Other	OTHER				
	448 Education	540 Mandamus & Other				
		550 Civil Rights				
		555 Prison Condition				
		560 Civil Detainee—Conditions of Confinement				

<input checked="" type="checkbox"/> 1	Original Proceeding	<input type="checkbox"/> 2	Removed from State Court	<input type="checkbox"/> 3	Remanded from Appellate Court	<input type="checkbox"/> 4	Reinstated or Reopened	<input type="checkbox"/> 5	Transferred from Another District (<i>specify</i>)	<input type="checkbox"/> 6	Multidistrict Litigation—Transfer	<input type="checkbox"/> 8	Multidistrict Litigation—Direct File
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Plaintiff and all similarly situated employees seek to recover damages for terminations without 60 days notice.

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

DOCKET NUMBER

EUREKA-MCKINLEYVILLE

Gail Lin Chung

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

Date and Attorney Signature. Date and sign the civil cover sheet.